

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

LETTERS PATENT APPEAL No 900 of 1998

with

LETTERS PATENT APPEAL No 901 of 1998

For Approval and Signature:

HON'BLE MR.JUSTICE B.J.SHETHNA
and
HON'BLE MR.JUSTICE SHARAD D.DAVE

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1. Whether Reporters of Local Papers may be allowed : YES
to see the judgements?
 2. To be referred to the Reporter or not? : YES
 3. Whether Their Lordships wish to see the fair copy : YES
of the judgement?
 4. Whether this case involves a substantial question : NO
of law as to the interpretation of the Constitution
of India, 1950 of any Order made thereunder?
 5. Whether it is to be circulated to the concerned : NO
Magistrate/Magistrates, Judge/Judges, Tribunal/Tribunals?

RR CHINYOY

Versus

BANK OF BARODA

Appearance:

1. LETTERS PATENT APPEAL No. 900 of 1998
MR BA VAISHNAV for Appellant No.
RULE SERVED for Respondent No. 1-2

CORAM : HON'BLE MR.JUSTICE B.J.SHETHNA
and
HON'BLE MR.JUSTICE SHARAD D.DAVE

Date of decision: 20/01/2005

COMMON ORAL JUDGEMENT

(Per : HON'BLE MR.JUSTICE B.J.SHETHNA)

#. Both these appeals are disposed of by this common order as they are arising out of common judgment and order dated 24.06.1998 passed by the learned single Judge of this court dismissing Special Civil Application Nos. 2429 of 1998 and 2430 of 1998 filed by the respective appellants against common opponent - Bank of Baroda.

#. Common question involved in these matters is of change of date of birth.

Appellant - R.R.Chinoy of Letters Patent Appeal no. 900 of 1998 had shown his birth date as 01.01.1954 on the basis of Secondary School Examination Certificate at the time of joining the bank as Clerk on 14.10.1976. Thereafter, after a period of almost 15 years of joining service, he applied for change of his birth date to 17.01.1955 instead of 01.01.1954 by way of representation dated 09.04.1991. His first representation was rejected on 27.05.1991 by the opponent - bank. Thereafter, after a period of more than six years, he made another representation dated 19.05.1997 for changing his birth date which was also rejected on 13.09.1997. This time, he approached this court by way of Special Civil Application No. 2430 of 1998. As stated earlier, it was dismissed by a common judgment and order dated 24.06.1998 passed by the learned single Judge of this Court.

Appellant - J.P.Gandhi of Letters Patent Appeal no. 901 of 1998 had shown his birth date as 31.01.1947 at the time of joining opponent - bank as Clerk on 13.04.1970 on the basis of his School Leaving Certificate. Thereafter, in 1997, he made the representation to the opponent - bank to change his birth date as 31.01.1949 instead of 31.01.1947. His representation was rejected. Therefore, he also filed petition i.e. Special Civil Application no. 2429 of 1998. The said petition was also dismissed by common judgment and order dated 24.06.1998 passed by the learned single Judge of this Court. Aggrieved by the same, both the appellants have filed above appeals.

#. Learned counsel Shri Vaishnav for the appellants in both the matters vehemently submitted that when there was authentic evidence in the nature of their birth certificates, then the opponent - bank ought to have

accepted their representations and correct their birth dates. He also submitted that the learned single Judge erred in dismissing their writ petitions relying on the judgment of the Hon'ble Supreme Court in case of Union of India V/s C.Rama Swamy and others reported in (1997) 4 SCC 647 (=) AIR 1997 SC 2055. He submitted that in the instant case, learned single Judge ought to have directed the bank to hold a detailed inquiry and thereafter come to just and proper conclusion. However, learned counsel Shri Darshan Parikh for the respondent - Bank of Baroda supported the judgment and order passed by the learned single Judge on 24.06.1998 and submitted that while rejecting their representations for correcting their birth dates, the opponent - Bank has not committed any error as both the appellants themselves have filled up their correct birth dates on the basis of School Leaving Certificates. Therefore, later on, after a period of almost 1 1/2 or 2 decades, no such correction can be made merely on the basis of such birth certificates which does not show the names of the appellants in it.

#. In matters relating to appointment to service, more particularly, public service, various factors are always taken into consideration before making a selection or an appointment. One of the important factors is of age. Ordinarily, as per the advertisement, the applications are invited for the post of clerk between age group of 21 to 27 years from the general category and by relaxing the age for scheduled castes and scheduled tribes category. In both these cases, as per their birth dates shown in their School Leaving Certificates, they were of 22 or 23 years of age whereas as per the correct birth dates, they would be only 21 years. Normally, preference is given to comparatively aged person rather than young and inexperienced person. It may not be possible to conclusively prove that an advantage had been gained by representing a date of birth which is different than that which is later sought to be incorporated. But it will not be unreasonable to presume that when a candidate, at the first instance, communicates a particular date of birth, there is obviously his intention that his age calculated on the basis of that date of birth should be taken into consideration by the appointing authority for adjudging his suitability for a responsible office. As held by the Hon'ble Supreme Court in case of Rama Swamy (supra) that in fact, where maturity is a relevant factor to assess suitability, an older person is ordinarily considered to be more mature and, therefore, more suitable. In such a case, it cannot be said that advantage is not obtained by a person because of an earlier date of birth, if he subsequently claims to be

younger in age, after taking advantage. In such a situation, it would be against public policy to permit such a change to enable longer benefit to the person concerned. Relying on this judgment of the Hon'ble Supreme Court, if the learned single Judge has refused to exercise his discretionary writ jurisdiction in favour of the appellants - petitioners, then certainly this court would not like to interfere in its letters patent jurisdiction in these appeals. In fact, the Hon'ble Supreme Court has taken this consistent view and the latest judgment of the Hon'ble Supreme Court is reported in AIR 2003 S.C. 4209 State of U.P. and others V/s Smt.Gulaichi, wherein the Hon'ble Supreme Court has held that the application for correction of birth date should not be ordinarily granted unless prima facie evidence of unimpeachable character is produced by the public servant. That is not the case herein.

#. In view of the above discussion, both the appeals fail and are hereby dismissed with no order as to costs.

(B.J.SHETHNA, J)

(SHARAD D DAVE, J)

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